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ABSTRACT

In this booklet, the author describes both the changing role of the school superintendent and nine ways in which today's administrators differ from their predecessors. He also discusses the role of the school attorney (1) as an advisor at law, (2) as a counselor on governance, and (3) as an attorney in litigation. (JF)

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HOW SCHOOL ADMINISTRATORS WORK WITH ATTORNEYS

—an attorney's point of view

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How School Administrators Work With Attorneys

—an attorney's point of view

To describe adequately the dynamic process of how school administrators work with school attorneys from an attorney's point of view, it is first necessary to depict the role of school administration *as an attorney sees it*. School administration has shifted in a subtle but profound way in the past several years. This shift has been subtle to the extent that many persons actively engaged in school administration are not even aware that the shift has occurred, much less appreciate its magnitude. The shift is profound in the sense that it has required an entirely different response to the problems facing school administrators throughout the nation—and if this changed response is not forthcoming, the problems are confounded to the point where either legitimate interests are being repressed by sheer power or chaos and disturbance are the order of the day.

There is in our nation today a new professionalism among school administrators. This new professionalism is a product of our changing world. To understand the developing relationship between school administrators and their attornies, the developing role of the superintendent, which is an integral part of the new professionalism of school administration, must be understood.

Therefore, let us look at this new professionalism and

analyze what is happening to the function of the superintendent and how all of this affects the relationship between the school administrator and the attorney. All, of course, from an attorney's point of view.

The school administrator today is different from his predecessor of even just a decade ago in at least nine ways. The sum of these differences is equal to the new professionalism of school administration because (1) it clearly sets apart today's school administrators from those of yesterday, and (2) it sharply separates today's school administrators from every other position currently held in the gamut of education generally. These nine differences may be described briefly as follows:

1 *Today's school administrator is UNDER the law; he no longer may safely assume that he IS the law.* Public education always has been one of the prime functions of government. Government has always exercised fundamental control of public education. The state government has immediate and direct sovereignty over public education but, in recent years, the federal government, with its maze of regulations controlling the acquisition and expenditure of federal education-project funds, has increased its capacity to set directions for public education.

To the extent that school administrators work under a system of state law and federal project regulations, the school administrator today is not really much different from his predecessor of a decade ago.

But, in addition to the specific controls and regulations imposed by government, ranging from the federal government through the local school board, there is a broad area deeply affecting the operation of the schools and the lives of the persons associated with the schools which could be called the domain of the school administrator. This is the area of school governance within which the school administrator is empowered to use his discretion. And it is in this area that the new professionalism of school administration dramatically comes to the surface.

The discretionary power of the school administrator in recent years has changed in a most pervasive way. This change ranges from control over students to dealing with school employees and citizens. This change has been wrought by (a) legislatures (in their laws governing collective negotiations and the 18-year old majority); (b) courts (in their interpretations of the federal and state constitutions concerning students and teachers); (c) the people themselves (in their changing life-styles

and systems of value) and (d) the economy (in its demand for highly trained personnel and its rejection of the ignorant and unskilled). This change has resulted in the construction of a set of standards by which the new school administrator must be guided in the exercise of his discretionary power. In short, the new professionalism of school administration requires more sophistication by the school administrator than ever before demanded because he must gauge his actions against standards which are at best general and imprecise when exercising his discretionary power. In this sense, he is faced with problems similar to King John after the *Magna Carta;* it was personally a lot easier and pleasant for King John to govern England before the *Magna Carta* was foisted upon him by an evolving society.

The new professionalism of school administration does *not* involve a surrender of administrative control. It cannot involve giving up control because the law, including state statutes and school board regulations, impose the responsibility for control upon school administrators. Rather, the new professionalism demands a change in which the old control is accomplished. In essence, the new professionalism, *from a philosophical standpoint,* consists of (a) an awareness that our society is in an ever-evolving status; (b) a willingness to accept the *fact* of change;

(c) a strong motivation to understand the nature of the change and the reasons impelling the change; (d) a desire to participate positively and constructively in the dynamics of the change; and (e) an ability to work effectively in the change process. The new professionalism requires, *as a practical matter*, (a) an admission that perhaps yesterday's response is not today's answer; (a) a continuing observation of what the expectations of education are; (c) a continuing study of the new standards being set for society affecting the schools by the Congress, the legislatures and the courts; and (d) a willingness to apply the new standards in a positive way.

These elements of the new professionalism must be set within the context that presupposes that the primary purpose of education is to prepare our children for life and that the school administrator is responsible under law for the successful operation of the schools. Perhaps no other area of the law illustrates the new professionalism of school administration more aptly than the area of student conduct and discipline. That brings us to the second difference between the old and the new professionalism.

2

Today's school administrator is dealing with a student who is entirely different at law than the student of a decade ago. The legislatures and the courts have created a new person with whom school administrators must work. The 18-year old is now an adult and all children enjoy an expanded aura of civil rights which vastly differentiates them from the status held by their mothers and fathers when they were children not many years ago.

Regardless of the merits of this new status of young people or whether it is a "good" or "bad" thing, the point is that it is a reality which today's school administrator must operate within. He does not have the luxury to damn it and oppose it; he must be solution-oriented and strive to manage it consistent with his responsibility over education. He is not a bystander; it is he who must devise new approaches to fit the new status of kids at law. He must balance the new approach with the old responsibilities for the safety and general well-being of children and the preservation of an optimum learning environment because the old responsibilities abide.

If this is not enough, there's the new relationship with school employees. And this is difference number three.

3

Today's school administrator must develop a new style of staff leadership never before seen on a large scale in elementary and secondary school education in America. The old ways of dealing with school employees are simply not available to the new school administrator. Yet the old responsibilities for leadership and management continue as part of the school administrator's function and for which he is being held increasingly accountable. The "father figure," "paternalistic autocracy," "benevolent dictatorship" concept—regardless of what colorful idiom of the organized teaching profession one could conjure up to describe the old style of administrative leadership—is no longer viable.

The new leadership demanded by the new professionalism stresses collegiality and a more democratic participatory approach, but within the limits roughly bounded by the school administrators' responsibilities at law and the collective bargaining-type contracts in effect within the district. Often, the first ones to remind the school administrator of his responsibilities for control of the school operation are the parents. This is difference number four.

4 *Today's school administrator deals with a more well-educated class of parents than ever before.* The educational level of parents has increased considerably over the course of the past two decades. These parents are not only interested in their children's education but are better able to articulate that interest and influence the school adminisrator. These parents can be moved only by results and well-reasoned approaches to the problems of educating their children at the school. What they and others *expect* of education leads us to difference number five.

5 *Today's school administrator is in the middle of the maelstrom over the dramatically expanded expectations of education.* The concept that education can cure all ills and solve all problems is still being tested; some claim that it's a fundamental truth while others view it as a shibboleth. Whatever the merits, society has structured its attitude toward education today in a way that looks to education to unite the races, to provide fullness in life, to educate the professionals and train the skilled, and to preserve the democratic way of life. Because education must deal with all levels of society and because the poorer people have awakened to the call to better themselves and have

vigorous spokesmen for the cause of their betterment, today's school administrators are subject to immense pressures in their school leadership. These pressures are dealt with in a new way by schools administrators, and this is difference number six.

6

Today's school administrator must develop an expertise in working closely and effectively with a wider spectrum of citizen groups more active in education than in the past. The school administrator has always worked with citizen groups. Today, though, the push for maximum involvement of all people in education has resulted in a plethora of citizen groups desiring to influence the course of education. Minority groups, conservative groups, liberal groups, civil rights groups, etc., are just a few of the labels these groups are given. Often, the expressed aims of the groups are in opposition to each other. On Monday, the school administrator meets with a group of minority parents who claim that his discipline of minority students is too harsh; on Tuesday, he meets with a group of minority parents who urge that discipline in the school be strengthened; on Wednesday, he meets with a taxpayer's group who decry the high school tax rate; on Thursday, he meets with an organization demanding that the schools expand their programs in certain areas and on Friday, he

meets with teacher representatives who demand both program and salary improvement when they know full well that the available tax levy will hardly support either. . . . These active groups with competing viewpoints pose a real challenge of leadership to the new school administrator. He must possess a real sophistication in working with such groups, all of whom have both a legitimate interest in education and an effective way of expressing it. His adroitness in the new professionalism of school administration will determine to a considerable degree the success which he meets in (a) moving the educational enterprise ahead and off dead-center, and (b) weathering the onslaughts of the critics whom he did not heed in moving forward. Sometimes these critics file lawsuits. That is difference number seven.

7 *Today's school administrator is far more vulnerable to judicial and legislative review of his leadership decisions than in days gone by.* The expansion of civil rights for students and increased social legislation have established standards which are subject to varying interpretations. Even when a school administrator acts in complete good faith and with a reasonable familiarity with the new standards, he may find himself defending his actions in court or before his school board in an almost

deadly adversary proceeding. The increased free legal aid provided under federal funds virtually guarantees effective representation of the indigent in any serious dispute with the school administrator's actions. And "law reform" through significant litigation is one of the primary goals of the legal aid program.

On the legislative side, lobbying for law change as the result of "outrages" perpetrated by school administrators, is isolated as such acts may be, is common in the State legislatures. Moreover, complaints made to school boards invariably receive more attention and time when they involve the capacity of a school administrator to deal with issues in the school affecting parents or students. This brings us to difference number eight.

8 *Today's school administrator works under a school board which is closer to the people and more involved in the politics of governing local education than the school boards of old.* Today, school boards are in a process of real evolution. They are becoming more "political" in nature in the sense that (a) their membership is drawn from a wider spectrum of the citizenry; (b) they meet more frequently; (c) they put themselves closer to the people by more active campaigning and more

public appearances between elections; (d) they are required by law or newly established custom to negotiate with teacher organizations on a level closer to "equality" than in earlier years; (e) they are the natural objects of attention from sophisticated citizen groups who want to speak only to "the man"; (f) they are held accountable for strife in the schools; and (g) the political battles involving new civil rights of youth and the racial integration of the schools are being staged in the schools and it is, as a practical matter, impossible for school boards to stay aloof of this activity. And, finally, school boards today are receiving increasingly better assistance from better organized and more generously funded State and National school boards associations. The value of this local, regional, state, and national interchange cannot be overestimated. Interchange leads us to difference number nine.

9 *Today's school administrator is expected to work more closely with other levels of government, locally, as well as at the state and federal levels.* During our changing times, the whole fabric of government is being closely scrutinized and sweeping changes are being proposed and tried. This is due to changing conditions, inflation, increased costs of governmental

services, and a duplication of effort in many areas of government which were established in the days when the county seat was not supposed to exceed one day's horseback ride from any place in the county. The changes affecting the schools include the year-round school, making expanded recreational use of school sites, racial integration of the schools (especially "metropolitan desegregation," which contemplates many school districts exchanging students with each other) and closer liaison with municipal, county, or regional planning officials in the growing field of "people planning" with the resultant "balanced communities." At the State level, the *Serrano v. Priest* financial standards will require close interchange with state personnel. And the growing acceptance by federal officials of the necessity of increasing federal funding of education means more interchange of school administrators at the federal level. In a word, the view of the school administrator today must be cosmopolitan in his work as a leader of one segment of many governmental layers.

These are the nine elements which together form the new professionalism of school administration. And it is within this context of the new professionalism of school administration that school attorneys serve their school administrator clients. It

is within this context that the school attorney can perform a real function in the governance and administration of the public schools under the law.

There are three principal ways which a school attorney works with the school administrator. They are (1) as an advisor on the law; (2) as a counselor on governance of the schools; (3) as the attorney in charge of litigation in which the school district is a plaintiff or defendant. Let us examine each one of these areas:

Advisor on the law

The school attorney must know more than just the law affecting school governance and administration to be an effective advisor on school law matters. He also must have a good working knowledge about school administration generally and about the superintendent's "style of administration" specifically. Consequently, he must become fully acquainted with the aims and goals of the superintendent as the chief administrative officer of the school district. He must be able to answer questions such as: What are the primary problems of the superintendent in giving leadership to the school district? What are the superintendent's general and specific goals? What is his relationship to his school board? Was he hired to do some

specific things by the school board? If so, has he done them? Why or why not? What is the community acceptance of the superintendent personally? His goals? These are merely a few of the myriad of questions which must be answered about the superintendent before a schools attorney can begin to be a real help to the school administration. The nature of the questions clearly imply that the school attorney must truly "get to know" the superintendent and his administration staff. This usually is not difficult when the school attorney is on the staff of the school district. When the school attorney is in private practice with offices just outside the central administration building, it is a project which must be "worked at."

This knowledge of the superintendent and his administrative staff by the school attorney is helpful not only to keep the attorney alert about where the school district is supposed to be heading under the superintendent's leadership, but also facilitates an easy personal relationship between them which makes verbal communication a much more effective device in selecting optimum courses of action. That is, written legal opinions, while they serve a real purpose in many instances, often are simply too slow in coming forth to provide effective guidance in dynamic legal problems confronting the school administrator on a

day-to-day basis. Verbal legal opinions, perhaps followed up in writing, if the circumstances warrant it, are considerably more helpful to the *practical* school administrator. But, such verbal opinions are relied upon only where there is a real trust and confidence built between the schools attorney and the superintendent and his administration staff. This relationship is possible only if the superintendent knows that the school attorney knows him and what he is trying to do as chief schoolman in the area.

Counselor on governance

A school district is first and foremost a local unit of government providing critically needed services to the people it serves. The concept that school districts are government is constantly alluded to by the courts in their many decisions defining the limits of authority of school people over students and staff. The school attorney is an expert on government. He understands the legislative, judicial, and executive functions and he is well aware of the dynamics of lawmaking in all three branches of government. He is in an ideal position by virtue of his lawyer's education to counsel the school board and the superintendent and his administrative staff on the governance of the school district. His professional knowledge, in tandem with mature judg-

ment and his knowledge about the community, which he sees from a different perspective than does the school administrator, can easily be marshalled by the school board and the superintendent for the betterment of the educational enterprise.

Attorney in litigation

Litigation is expensive for the school district and can be an energy depleter of school administrative personnel, especially the superintendent. If the litigation is of the so-called "law reform" type, which is instituted to challenge a present law in hopes of overturning it and substituting therefore a legal principle more to the liking of the plaintiff, the lawsuit also can split the school board into opposite camps or isolate the superintendent. Either of these situations can have a very adverse impact upon the wellbeing of the school district. Accordingly, there is much more to handling or managing school district litigation in an effective manner than technical competence as a lawyer. Technical competence, of course, is a minimum essential; but it is only the beginning point in conducting the litigation for a school district. The school attorney must have knowledge about the school board and the superintendent and his administrative staff, plus a grasp of the tactics of *plaintiffs* in waging war with a school district in court. The school attor-

ney is in a position to protect the superintendent and the school board from harassment, embarrassment, and the waste of time and energy in conducting school district litigation. He can do this, though, only through a close relationship with the superintendent and his administrative staff.

The success of any school administrator depends to a great extent upon his capacity to recognize accurately the abilities of the people who work with him in the public school enterprise and to channel these abilities in such a way that the educational system is continually receiving the best contribution each person is capable of giving. This is the fundamental precept of school administration. Like all such cardinal rules, it is easier to say than do. And the difficulty of observing this principle is clearly increasing today as persons with new kinds of more specialized talents join the old school board-administrator-teacher triumvirate to help solve the more complex problems of providing a high quality of equal educational opportunities in the classroom during the 1970's.

One of those persons serving the schools today whose significance to the educational effort has expanded dramatically during the past decade is the school attorney. The old functions of the school attorney involving lawsuits, business contracts,

claims for money damages against the schools, condemnation and school bond and tax elections are still being performed by him, though many of these functions have broadened in scope because of the litigious era in which we live. But more importantly, a whole new vista has opened in the operation of the public schools today that demands a special approach by the school administrator which can successfully be made only with the advice and counsel of the schools attorney. This new dimension was created during the 1950's and is daily being enlarged by the courts and the legislatures throughout the nation.